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ATTACHMENT 2

March 2, 2000

To: Department Heads

From: Alan Sasaki  
Auditor-Controller

Subject: Contractor Non-Responsibility and Debarment

On December 22, 1999, I sent you a memo indicating that the Board of Supervisors had instructed the Auditor-Controller, Chief Administrative Officer, County Counsel, Director of Public Works and Director of Internal Services to develop a comprehensive policy requiring Departments to effectively track and monitor contractor performance and adherence to applicable labor laws. The tracking system will be used for the purpose of finding contractors non-responsible to perform services under the proposed contract, and debarring contractors with chronic problems from obtaining future contracts. I also provided you with a time frame for implementation and the information that needed to be compiled.

Attached are the final implementation instructions. My office has scheduled a three-hour training class on March 22<sup>nd</sup>. The class will be held from 1:30 to 4:30 p.m. at the Department of Public Works, 900 South Fremont Avenue, Alhambra in Conference Room B. Auditor-Controller and Internal Service Department staff will cover the implementation instructions, including how to input contract information into the data base for tracking purposes.

Due to limited class space, we will only be able to accommodate two representatives from each Department. Please let me know if you have any questions, or your staff may call Patrick McMahon at (213) 974-0301.

AS:PM:DM

Attachment

IMPLEMENTATION INSTRUCTIONS  
PROCEDURES FOR DETERMINATIONS OF CONTRACTOR  
NON-RESPONSIBILITY AND CONTRACTOR DEBARMENT



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## IMPLEMENTATION OF PROCEDURES FOR DETERMINATIONS OF CONTRACTOR NON-RESPONSIBILITY AND CONTRACTOR DEBARMENT

On January 11, 2000, the Los Angeles County Board of Supervisors adopted an ordinance for Determinations of Contractor Non-Responsibility and Contractor Debarment (Ordinance), Los Angeles County Code Chapter 2.202, which is applicable to all County contracts except to the extent applicable State and/or Federal laws are inconsistent with the terms of the Ordinance. These implementation instructions provide guidelines and necessary interpretation to assist departments in implementing the Ordinance.

### I. Introduction

In adopting the Ordinance, the Board made a finding that, in order to promote integrity in the County's contracting processes and to protect the public interest, the County's policy shall be to conduct business only with responsible contractors. Requirements for finding contractors non-responsible and debarring contractors are applicable to all County contracts, unless Federal or State law otherwise applies.

Other procedures in these implementation instructions describe the requirements for development and use of a countywide Contract Data Base to monitor contractor performance and contractor labor law violations; these procedures are applicable to Proposition A/Living Wage, information technology, and construction contracts.

Individual departments remain responsible for reviewing past contractor performance (e.g., past labor law issues on both County and non-County contracts) prior to recommending contracts, monitoring contractor performance, inputting relevant contractor information in the Contract Data Base, recommending findings of non-responsibility, and initiating debarment procedures, as applicable.

Semi-annually, the Office of Affirmative Action Compliance (OAAC) and the Internal Services Department (ISD) will jointly review the Contract Data Base to assess departmental follow up on documented violations or other performance deficiencies which may merit debarment. Information in the Contract Data Base will pertain to current and prospective contracts. Contractors will be required to disclose past performance as part of the solicitation process.

Contractor performance problems and contractor labor law violations that are identified in the semi-annual Contract Data Base review, and for which the relevant department has not initiated appropriate action, will be referred to the

Chief Administrative Office (CAO) and the Auditor-Controller (A-C). These two departments will jointly work with the contracting department to determine if the department should pursue debarment of a contractor. The A-C also has responsibility for overall monitoring of departmental compliance with Ordinance requirements.

Department heads will be required to annually certify that they have complied with all required procedures including: 1) completing at least annual contractor performance reviews, 2) inputting required information in the Contract Data Base, as appropriate, and 3) proceeding with non-responsibility and debarment procedures, where required.

## II. General Description of the Ordinance

### A. Determination of Contractor Non-Responsibility.

The Ordinance provides that prior to a contract award, the County may determine that a contractor is non-responsible for purposes of that contract. This finding would be appropriate if the bidder has done any of the following:

- (1) Committed any act or omission which negatively reflects on the contractor's quality, fitness or capacity to perform a contract with the County or any other public entity, or engaged in a pattern or practice which negatively reflects on same;
- (2) Committed an act or omission which indicates a lack of business integrity or business honesty; or,
- (3) Made or submitted a false claim against the County or any other public entity.

Such contractors are entitled to written notice of the basis for the proposed non-responsibility finding and a hearing before the department head or his/her designee. The department head makes a recommendation regarding finding of non-responsibility to the Board of Supervisors. The Board can modify, deny, or adopt the recommendation of the department. The Board makes the final determination of non-responsibility.

**NOTE:** Finding a bidder/proposer non-responsible is not the same as finding a bidder/proposer non-responsive to solicitation requirements.

- ✓ Non-responsibility refers to finding a bidder/proposer incapable of performing as a responsible County contractor, based on past performance history or other relevant documentation.
- ✓ Non-responsive generally refers to the failure of a bidder/proposer to comply with all solicitation requirements making the bidder/proposer ineligible for consideration in bid/proposal evaluation process. It is generally not a reflection on the bidder's/proposer's capacity to perform as a responsible County contractor and does not require the exercise of the department's judgment in determining whether the bidder/proposer is responsive. In some instances, however, the distinction may not be clear based on the nature of the bidder's/proposer's omission. If department staff are unsure as to whether an action by a bidder/proposer is an indication of non-responsibility or non-responsiveness, County Counsel shall be consulted.

#### B. Debarment of Contractors.

The Ordinance provides that the County may debar a contractor who has an existing contract with the County and/or a contractor who submits a bid or proposal for a new contract with the County. Debarment would be appropriate if the County finds that the contractor has:

- (1) Violated any term of a contract with the County;
- (2) Committed any act or omission which negatively reflects on the contractor's quality, fitness or capacity to perform a contract, or engaged in a pattern or practice which negatively reflects on same;
- (3) Committed an act or omission which indicates a lack of business integrity or business honesty; or,
- (4) Made or submitted a false claim against the County or any other public entity.

Such a contractor is entitled to written notice of the basis for the proposed debarment and a hearing before the Contractor Hearing Board (CHB), comprised of CAO, ISD, OAAC, and the Department of Public Works (DPW). The CHB makes a recommendation to the Board regarding whether the contractor should be debarred and, if so, the appropriate

*CAO doesn't vote  
unless one of the  
other Dept is,  
the recommending  
-t-*

length of time for the debarment. The Board can modify, deny or adopt the recommendation of the CHB. A debarment finding becomes final upon the approval of the Board.

Debarment results in a contractor being prohibited from bidding upon, being awarded, and/or performing work on a contract with the County for a period up to three years. Any or all existing contracts with a debarred contractor may be terminated. A debarred contractor is identified as such in the Contract Data Base.

### **III. REQUIREMENTS FOR INVITATION FOR BIDS (IFBs), REQUEST FOR PROPOSALS (RFPs), AND CONTRACTS**

As of February 10, 2000, the following requirements set forth in the Ordinance are effective for all solicitations and contracts, except to the extent applicable State and/or Federal laws are inconsistent with the terms of the Ordinance.

#### **A. IFB and RFP Solicitation Documents**

All IFB and RFP solicitations shall include the standard language as provided in Exhibit I. In addition, the most current listing of debarred contractors, which is available from the Contract Data Base, shall be included in all solicitation packages.

#### **B. Standard Contract Language**

All County contracts shall include the standard language as provided in Exhibit II.

### **IV. CONTRACTOR PERFORMANCE MONITORING**

#### **A. All Contracts**

Departments remain responsible for monitoring contractor performance and compliance with all contract terms, consistent with existing Board policy that requires at least an annual evaluation of contractor performance.

**B. Proposition A/Living Wage, Information Technology and Construction Contracts Contract Data Base**

Separate data bases for construction, information technology and Proposition A/Living Wage contracts have been merged into a single Contract Data Base hosted by ISD which is available at the following County Intranet site: <http://contract.co.la.ca.us>.

Departments are responsible for entering specific performance information into the Contract Data Base for all existing and prospective Proposition A/Living Wage, information technology and construction contracts. This information includes contract identifying information and contractor performance data, contractor compliance with contract wage requirements, and contractor labor law violations. The Contract Data Base is targeted to be available for departmental input by mid-March 2000. Training on the Data Base will be provided to departmental contracting staff.

**1. Initial identifying information.**

Contract identifying information which department staff must input for the affected contracts includes:

- a) Contractor Identifying Information;
- b) Contract Number;
- c) Contract Title;
- d) Service Type (Proposition A/Living Wage, Construction, or Technology) and Sub-Type (e.g., custodial (Prop A), hardware (Technology), public works construction (Construction);
- e) Department ID;
- f) Department Contact ID and Phone Number;
- g) Initial Contract Term (e.g., 3 years plus 2 one-year optional extensions);
- h) Contract Start/Effective Date;
- i) Contract End Date (without optional extensions);
- j) Contract End Date after Exercise of All Optional Extensions;
- k) Contract Cost (Annual Cost).

This information shall be entered into the Contract Data Base upon the Board's ~~or the department head's delegated authority~~ approval of the affected contract. Department heads shall designate specific staff to input and update the Contract Data Base.

2. Contractor Performance Information

Departments must enter performance information into the Contract Data Base "Report Card", answering "yes" or "no" to standard questions. The Contract Data Base and Report Card must be updated at least annually in conjunction with the required contractor performance review, but more frequently if performance problems are identified and documented. If a contract period is less than one year, the Contract Data Base and Report Card shall be updated at the end of the contract period, at a minimum.

3. Semi-Annual Review of the Contract Data Base

Failure to enter contract identifying information and performance information at least annually, or at the conclusion of a shorter term contract, will trigger the identification of such contracts in a semi-annual review of the Contract Data Base by ISD and OAAC. Such contracts will be identified to the CAO and the A-C for further review and discussion with the contracting department. In addition, indications of performance problems that have not been acted upon by a department will similarly generate an inquiry and an assessment of the need for further action, including consideration of debarment proceedings.

V. SPECIFIC DEPARTMENTAL ROLES

The following briefly describes the roles of designated departments in the contract monitoring and non-responsibility/debarment process.

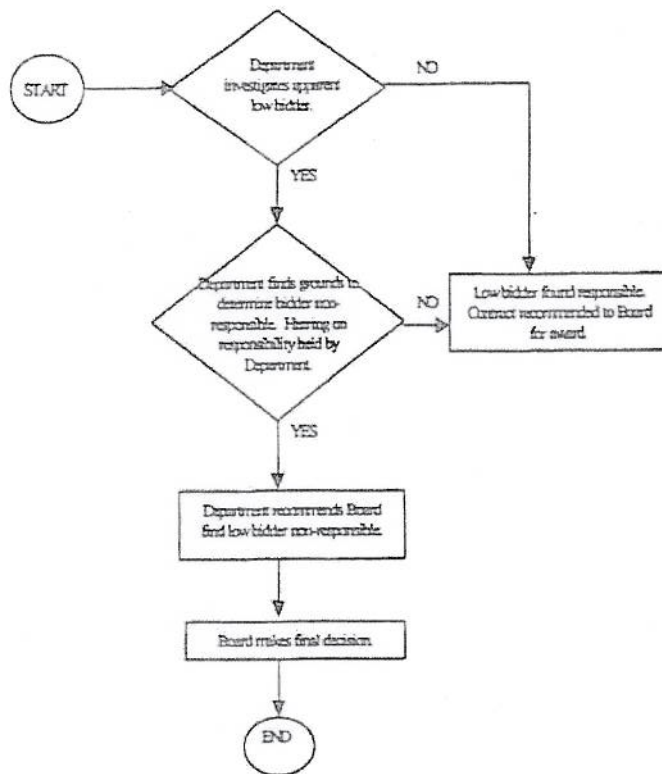
- A. All County departments: Responsible for timely and accurate input into the Contract Data Base and for taking remedial action with respect to contractor performance problems, where appropriate. This includes investigating and bringing charges for non-responsibility and debarment proceedings. Also required to append a list of debarred contractors to all IFBs and RFPs.
- B. Internal Services Department: Participates with OAAC in the semi-annual review of the Contract Data Base to identify potential problem contractors which show no indication of departmental action. ISD will provide contracting expertise related to contract performance monitoring. ISD will also host the Contract Data Base, and participate as a member of the CHB.

- C. **Office of Affirmative Action Compliance:** Participates with ISD in the semi-annual review of the Contract Data Base to identify potential problem contractors which show no indication of departmental action. OAAC will provide expertise related to monitoring prevailing wage, labor law violations, employment discrimination, civil rights violations, and Living Wage compliance. Also participates as a member of the CHB.
- D. **Auditor-Controller:** After notification by ISD and OAAC of a potential problem with a contractor, the A-C and CAO will work with the relevant department to determine if the department should pursue debarment of contractor. A-C also evaluates the contract monitoring process in conjunction with departmental audits, and provides countywide auditing expertise.
- E. **Department of Public Works:** Participates on the CHB to bring expertise in the variety of contracts they administer, including construction contracts.
- F. **Chief Administrative Officer:** After notification by ISD and OAAC of a potential problem with a contractor, the CAO and A-C will work with the relevant department to determine if the department should pursue debarment of contractor. CAO will also participate on the CHB to bring general contracting and countywide perspective to the process. The CAO will chair the CHB as a non-voting member to prevent tie votes, except in instances when a contract before the CHB involves ISD, DPW, or OAAC. In such an instance, the CAO will exercise its vote in lieu of the relevant department to avoid the appearance of a conflict.
- G. **County Counsel:** Advises if there is sufficient cause to proceed with a debarment or non-responsibility action and, if so, assists the department and the CHB in preparing the debarment or non-responsibility case, and provides legal advice throughout the process.

#### VI. NON-RESPONSIBILITY DETERMINATION

During a contract solicitation process, a department can recommend to the Board that a bidder/proposer be found non-responsible to perform services under the proposed contract, based on criteria established in the ordinance (see Section II A).

A flow chart for the non-responsibility process is shown below.



**A. Departmental Assessment of Cause for a Non-Responsibility Finding**

In pursuing a finding of non-responsibility against a contractor, the burden of proof is on the department and must be established by a preponderance of the evidence.

1. Department staff who become aware of information concerning the existence of a cause for finding a bidder or proposer non-responsible shall immediately advise departmental management, who shall promptly notify appropriate County Counsel staff.
2. Departments shall promptly investigate any reports of information concerning the existence of a cause for a non-responsibility finding. The following are examples of responsibility factors that a department may consider in assessing responsibility.

- ✓ General reputation and experience of the bidder.
- ✓ Bidder's ability to serve the County.
- ✓ Financial ability of the bidder to successfully meet the requirements of the contracts.
- ✓ Prior knowledge of and experience with the bidder in terms of past performance.
- ✓ Nature and extent of company data furnished by bidder upon request of the County.
- ✓ Bidder's experience with the commodities or service.
- ✓ Length of time the commodities or services have been on the market.

Departments must develop evidence/documentation to support such a finding and discuss the adequacy of the documentation with the assigned County Counsel. In addition to the above considerations, a department must include the results of inquiries into past performance on other County and/or other governmental agency contracts, wage and/or other labor law violations. The seriousness and extent of the contractor's acts, omissions, patterns or practices as well as any relevant mitigating factors may be considered in determining whether a contractor should be deemed non-responsible.

#### B. County Counsel Assistance

County Counsel will advise the department if there is sufficient cause to proceed with a non-responsibility hearing and provide legal advice, as necessary, throughout the process

#### C. Written Notice of Departmental Non-Responsibility Hearing

1. Before initiating a hearing on a bidder's or proposer's responsibility, the department shall send written notice to the bidder or proposer stating that the department intends to recommend to the Board of Supervisors that the bidder or proposer be found non-responsible. The notice shall specify the basis for the proposed recommendation of non-responsibility and a summary of any evidence to support such recommendation.

The notice shall also include the date, time and place of the hearing before the department head/designee.

The parties may agree to submit the matter on the basis of documentary evidence only.

2. The notice shall also advise the bidder or proposer that the bidder or proposer is required to confirm with the department that the bidder or proposer and/or representative intends to attend the hearing.
3. The notice shall also advise the bidder or proposer that failure of a bidder or proposer to confirm with the department the hearing date or otherwise respond to the notice may result in the bidder or proposer waiving all rights of appeal.
4. Before a department sends a written notice to a bidder or a proposer pursuant to this Ordinance, such notice must be approved by management at the department and County Counsel. County Counsel will advise as to the appropriate delivery method for the notice.
5. Notices made pursuant to this Ordinance shall be deemed served and effective upon the date the notice is provided in person or by facsimile, or two days after sending by first class mail.

#### **D. Non-Responsibility Hearing**

On the date and place specified in the notice, the department shall conduct a hearing where evidence on the proposed non-responsibility determination is presented; the burden of proof is on the department and must be established by a preponderance of the evidence.

##### **1. Departmental Hearing Officer**

The department head, or a designee, shall conduct the hearing, examine the evidence on the issue of a bidder's or proposer's responsibility, and prepare a proposed decision and recommendation to the Board of Supervisors regarding whether the bidder or proposer should be found non-responsible. The person acting as the departmental hearing officer must be a different person than the department staff who investigates or presents the charges in support of a finding of non-responsibility at the hearing.

2. Departmental Investigator

The department head shall designate a department staff member who will investigate information concerning the existence of a cause for finding a bidder or proposer non-responsible. The departmental investigator may also act as the departmental advocate (see below).

3. Departmental Advocate

The department head shall designate a department staff member who will present charges of a bidder's or proposer's non-responsibility at a hearing before the departmental hearing officer.

4. County Counsel Representation

County Counsel staff shall represent both the hearing officer and the departmental investigator/advocate. The County Counsel staff representing the departmental investigator/advocate shall be a different County Counsel than the one representing the hearing officer.

5. Bidder/Proposer, Attorney/Authorized Representative

The bidder/proposer and/or attorney or other authorized representative of the bidder/proposer shall be afforded an opportunity to appear at the hearing and to submit documentary evidence, present witnesses and offer rebuttal evidence. An authorized representative may be designated by the bidder/proposer in person at the hearing or by letter received at or prior to the departmental hearing, signed by the bidder/proposer who submitted the bid/proposal.

6. Presentation of Evidence and Rebuttal

- a. At the departmental hearing, the department shall first present evidence to support a finding that a bidder or proposer is non-responsible. During the department's presentation of its case, the bidder, proposer or representative of same shall not interrupt or challenge the presentation.

- b. The person, on behalf of the department, who presents the charges of non-responsibility has the right to call and examine witnesses, to cross-examine opposing witnesses, to present documentary or any other evidence in support of a finding that the bidder or proposer is non-responsible.
- c. After the department's presentation of its case, the bidder or proposer and/or the bidder's or proposer's representative shall present evidence to support a finding that the bidder or proposer is responsible and to rebut evidence that is the basis for the department's recommendation. During the bidder's, proposer's or representative's presentation of his or her case, the department shall not interrupt or challenge the presentation.
- d. The bidder or proposer and/or the bidder's or proposer's representative has the right to call and examine witnesses, to cross-examine opposing witnesses, to present documentary or any other evidence in support of a finding that the bidder or proposer is responsible and to rebut evidence that is the basis for the department's recommendation.
- e. Each party shall have the opportunity to rebut the evidence presented by the other party.
- f. The departmental hearing officer may ask questions, seek clarification and request additional information from the parties at any time during the hearing. The departmental hearing officer has discretion to continue the hearing as necessary.
- g. The departmental hearing officer shall close the hearing at the conclusion of the presentation of the evidence. All evidence to be considered by the departmental hearing officer shall be submitted prior to the close of the hearing, unless otherwise specified by the departmental hearing officer.

7. Rules of Evidence

The strict rules of evidence do not apply in the departmental hearing. At the hearing, the departmental hearing officer can consider all relevant information on the issues related to the subject of the hearing, as long as the information presented is the sort of information on which responsible persons are accustomed to rely in the conduct of serious affairs.

8. Burden of Proof and Standard of Proof

The burden of proof is on the department proposing a non-responsibility determination and must be established by a preponderance of the evidence. Preponderance of the evidence means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

E. Recording the Departmental Hearing

The hearing before the departmental hearing officer shall be recorded by any method deemed appropriate by the hearing officer (audio tape, video tape, reporter/transcriber) and a copy of the record of the proceeding shall be made available to the contractor at cost, upon request.

F. Departmental Hearing Officer Proposed Decision and Recommendation to the Board of Supervisors

1. After the hearing, the departmental hearing officer shall prepare a proposed decision, which shall contain a recommendation regarding whether the bidder or proposer should be found non-responsible regarding the contract(s) at issue. The departmental hearing officer's proposed decision and recommendation regarding whether the bidder or proposer be found non-responsible shall be based on the record of the hearing.
2. In making the proposed decision and recommendation, the departmental hearing officer may consider such items, including but not limited to, the seriousness and extent of the bidder's or proposer's acts or omissions, patterns or practices, as well as any mitigating or aggravating factors presented at the hearing.

3. The department shall present to the Board of Supervisors the proposed decision, a recommendation on a finding of non-responsibility and a record of the hearing before the department.
4. The department shall give notice to the bidder or the proposer of the proposed decision and recommendation. The notice shall specify the date, time and place of the hearing before the Board of Supervisors. County Counsel will advise as to the appropriate method of delivery.

**G. Board of Supervisors' Discretion**

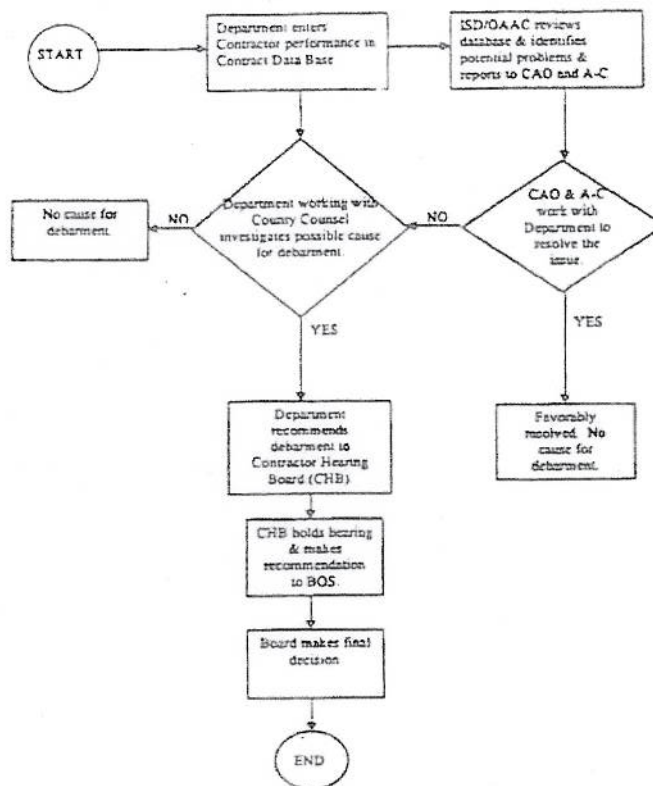
The Board of Supervisors may, in its discretion, limit any further hearing to the presentation of evidence not previously presented. The Board of Supervisors has the right to modify, deny or adopt the proposed decision and recommendation of the departmental hearing officer. A non-responsibility finding shall become final upon approval of the Board of Supervisors; if non-responsibility is determined, the bidder is ineligible for the award of the contract(s) at issue.

**H. Contract Data Base Entry**

Designated departmental staff shall enter a Board of Supervisors' finding of non-responsibility into the Contract Data Base Report Card for applicable Proposition A/Living Wage, construction and technology contracts. (See Section IV. B above for information on the Contract Data Base.)

**VII. DEBARMENT DETERMINATION**

The County may debar a contractor who has an existing contract with the County and/or a contractor who has submitted a bid or proposal for a new contract with the County. Debarment is an action taken by the County which results in a contractor being prohibited from bidding, being awarded, and/or performing work on a contract with the County for a period of up to three years. A contractor who has been determined by the County to be subject to such a prohibition is "debarred." A flow chart for the debarment process is shown on the following page.



#### A. Departmental Assessment of Cause for Debarment

In pursuing a debarment action against a contractor, the burden of proof is on the department and must be established by a preponderance of the evidence. The ordinance provides basic guidelines for making such a finding (See Section II. B).

Contractor performance problems may be identified during routine contract monitoring, the annual performance review, A-C reviews, the semi-annual review of the Contract Data Base by ISD and OAAC, and/or other reports of information concerning the existence of a cause for a debarment action, including complaints from the public or contractor employees.

Departments shall promptly investigate any report of contractor performance that may justify debarment. When a department staff member becomes aware of performance problems or any cause that potentially merit debarment action, the department staff member shall

immediately advise departmental management who shall promptly notify the appropriate County Counsel.

**B. County Counsel Assistance**

County Counsel staff will advise the department if there is sufficient cause to proceed with a debarment hearing and provide legal advice throughout the process.

**C. Contractor Hearing Board**

**1. Composition/Structure**

The CHB is comprised of the CAO, ISD, OAAC and DPW. The CAO functions as the chair to call meetings as necessary to hear departmental debarment cases. County Counsel acts as a legal advisor to the CHB.

As chair, the CAO will be a non-voting member of the CHB except in the instance when the contract at issue involves ISD, DPW or OAAC. In such an instance, the relevant departmental representative will not vote and CAO will exercise its vote.

**2. Scheduling the CHB Hearing**

The department requesting a debarment hearing shall contact the designated CAO staff, Nan Flette, at (213) 974-1168, to schedule a hearing date. The CAO shall confirm a hearing date with the other CHB member departments that is responsive to the needs of the department. The hearing date shall be provided to the requesting department for issuance of written hearing notice to the contractor subject to the debarment process, consistent with the requirements in IV. D below.

**D. Written Notice of CHB Debarment Hearing**

1. Before initiating a debarment hearing before the CHB, the department shall send written notice to the contractor stating that the department intends to recommend that the contractor be debarred. The notice shall specify the basis for the proposed debarment recommendation and a summary of any evidence to support such recommendation. The notice shall also include the date, time and place of the hearing before the CHB.

The parties may agree to submit the matter on the basis of documentary evidence only.

2. The notice shall also advise the contractor that the contractor is required to confirm with the department that the contractor and/or representative intends to attend the CHB hearing.
3. The notice shall also advise the contractor that failure of a contractor to confirm with the department the hearing date or otherwise respond to the notice may result in the contractor waiving all rights of appeal.
4. Before a department sends a written notice to a contractor pursuant to this Ordinance, such notice must be approved by department management and County Counsel staff. County Counsel will advise as to the appropriate method of delivery.
5. Notices made pursuant to this Ordinance shall be deemed served and effective upon the date the notice is provided in person or by facsimile, or two days after sending by first class mail.

#### **E. Contractor Hearing Board Debarment Hearing**

On the date and place specified in the written notice to the contractor, the CHB shall conduct a hearing where evidence on the proposed debarment action is presented by the contracting department and rebuttal information is provided by the contractor. The burden of proof is on the department and must be established by a preponderance of the evidence.

##### **1. Contractor Hearing Board**

The chair of the CHB shall conduct the hearing and CHB members shall examine the evidence on the issue of the proposed debarment, and prepare a proposed decision and recommendation to the Board of Supervisors regarding whether the contractor should be debarred and, if so, the appropriate length of time for debarment, not to exceed three years.

##### **2. Departmental Investigator**

The department head shall designate a department staff member who will investigate information concerning the existence of a cause for debarment. The departmental investigator may also act as the departmental advocate at a CHB hearing (see below).

3. Departmental Advocate

The department head shall designate a department staff member who will present charges in support of contractor debarment at a CHB hearing.

4. County Counsel Assistance

County Counsel staff will advise the department if there is sufficient cause to proceed with a debarment action and provide legal advice, as necessary, throughout the process to both the department initiating the debarment action as well as the CHB. These must be separate counsel.

5. Contractor, Attorney/Authorized Representative

The contractor and/or attorney or other authorized representative of the contractor shall be afforded an opportunity to appear at the hearing and to submit documentary evidence, present witnesses and offer rebuttal evidence. An authorized representative may be designated by the contractor in person at the hearing or by letter received at or prior to the hearing, signed by the contractor who submitted the bid/proposal.

6. Presentation of Evidence and Rebuttal

- a. At the hearing, the departmental advocate shall first present evidence to support a finding that a contractor should be debarred. During the department's presentation of its case, the contractor or representative of same shall not interrupt or challenge the presentation.
- b. The departmental advocate who presents the charges in support of debarment has the right to call and examine witnesses, to cross-examine opposing witnesses, to present documentary or any other evidence in support of a debarment determination.
- c. After the department's presentation of its case, the contractor and/or the contractor's representative shall present evidence to support a finding that the contractor should not be debarred and to rebut evidence that is the basis for the department's recommendation.

During the contractor's or contractor's representative's presentation of his or her case, the department shall not interrupt or challenge the presentation.

- d. The contractor and/or the contractor's representative has the right to call and examine witnesses, to cross-examine opposing witnesses, to present documentary or any other evidence in support of a finding that the contractor should not be debarred and to rebut evidence that is the basis for the department's recommendation.
- e. Each party shall have the opportunity to rebut the evidence presented by the other party.
- f. Members of the CHB may ask questions, seek clarification and request additional information from the parties at any time during the hearing. The CHB has discretion to continue the hearing, as necessary.
- g. The chair of the CHB shall close the hearing at the conclusion of the presentation of the evidence. All evidence to be considered by the CHB shall be submitted prior to the close of the hearing, unless otherwise specified by the chair.

7. Rules of Evidence

The strict rules of evidence do not apply in the CHB hearing. At the hearing, the CHB can consider all relevant information on the issues related to the subject of the hearing, as long as the information presented is the sort of information on which responsible persons are accustomed to rely in the conduct of serious affairs.

8. Burden of Proof and Standard of Proof

The burden of proof is on the department proposing debarment and must be established by a preponderance of the evidence. Preponderance of the evidence means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

**F. Recording the CHB Hearing**

The hearing before the CHB shall be recorded by any method deemed appropriate by the Chair (audio tape, video tape, reporter/transcriber) and a copy of the record of the proceeding shall be made available to the contractor at cost, upon request.

**G. CHB Proposed Decision and Recommendation to the Board of Supervisors**

1. After the hearing, the CHB shall prepare a proposed decision, which shall contain a recommendation regarding whether the contractor should be debarred and, if so, the appropriate length of time for debarment, not to exceed three years. The CHB's proposed decision and recommendation regarding debarment shall be based on the record of the hearing.
2. In making the proposed decision and recommendation, the CHB may consider such items, including but not limited to, the seriousness and extent of the contractor's acts or omissions, patterns or practices, as well as any mitigating or aggravating factors presented at the hearing.
3. The CHB shall present to the Board of Supervisors the proposed decision and a recommendation on debarment, and a record of the hearing before the CHB.
4. The CHB shall give notice to the contractor of the proposed decision and recommendation. The notice shall specify the date, time and place of the hearing before the Board of Supervisors. County Counsel will advise as to the appropriate method for delivery of the notice.

**H. Board of Supervisors' Discretion**

The Board of Supervisors may, in its discretion, limit any further hearing to the presentation of evidence not previously presented. The Board of Supervisors has the right to modify, deny or adopt the proposed decision and recommendation of the CHB. A debarment determination shall become final upon approval of the Board of Supervisors.

I. **Contract Data Base Entry**

Designated departmental staff shall enter a Board of Supervisors' determination to debar a contractor into the Contract Data Base Report Card for applicable Proposition A/Living Wage, construction and technology contracts (See Section IV B for information on the Contract Data Base.)

J. **Modification of a Debarment Decision**

For good cause, a debarred contractor may request reconsideration of a debarment determination to either modify/reverse the debarment decision or reduce the period or scope of debarment.

1. **Debarred Contractor**

The contractor may request in writing that the CHB or the Board of Supervisors reconsider a debarment determination.

2. **Basis for Reconsideration**

The CHB or Board of Supervisors may consider a request for reconsideration for good cause, including newly discovered material evidence, bona fide changes in ownership of the contractor, elimination of the cause for which the debarment was imposed or other reasons the CHB or Board of Supervisors deems appropriate.

3. **Board of Supervisors' Approval**

Any recommendation by the CHB to modify/reverse or reduce the period or scope of debarment is subject to approval by the Board of Supervisors. A modification/reversal or reduction in the period or scope of debarment shall become final upon the approval of the Board of Supervisors.

4. **Notice to the Contractor**

The contractor shall be provided with notice of the decision on reconsideration. County Counsel will advise as to the appropriate method for delivery of notice.

#### **VIII. List of Debarred Contractors**

The Contract Data Base includes a listing of debarred contractors (Living Wage/Proposition A, construction and technology contractors). Departmental staff shall append a copy of this listing to all IFB and RFP solicitations, as indicated in Section III. A.

#### **IX. Department Head Annual Certification of Compliance**

Department heads are required to annually certify to the A-C that they have complied with all required Ordinance procedures, including completing at least annual contractor performance reviews, inputting required information in the Contract Data Base, and proceeding with non-responsibility and debarment procedures where required. A copy of this certification shall be included with the department heads' annual submission of performance assessments.

STANDARD SOLICITATION LANGUAGE

1. Determination of Bidder [Proposer] Responsibility (Use "Bidder" or "Proposer" as appropriate to the type of solicitation. Use "Contractor", "Consultant", "Vendor" etc. as appropriate to the type of contract.)
  - A. A responsible Bidder is a Bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the contract. It is the County's policy to conduct business only with responsible contractors.
  - B. Bidders are hereby notified that, in accordance with Chapter 2.202 of the County Code, the County may determine whether the Bidder is responsible based on a review of the Bidder's performance on any contracts, including but not limited to County contracts. Particular attention will be given to violations of labor laws related to employee compensation and benefits, and evidence of false claims made by the Bidder against public entities. Labor law violations which are the fault of subcontractors and of which the Bidder had no knowledge shall not be the basis of a determination that the Bidder is not responsible.
  - C. The County may declare a Bidder to be non-responsible for purposes of this contract if the Board of Supervisors, in its discretion, finds that the Bidder has done any of the following: (1) committed any act or omission which negatively reflects on the Bidder's quality, fitness or capacity to perform this contract with the County or a contract with any other public entity, or engaged in a pattern or practice which negatively reflects on same, (2) committed an act or omission which indicates a lack of business integrity or business honesty, or (3) made or submitted a false claim against the County or any other public entity.
  - D. If there is evidence that the [apparent low Bidder/highest ranked Proposer] may not be responsible, the Department shall notify the Bidder in writing of the evidence relating to the Bidder's responsibility, and its intention to recommend to the Board of Supervisors that the Bidder be found not responsible. The Department shall provide the Bidder and/or the Bidder's representative with an opportunity to present evidence as to why the Bidder should be found to be responsible and to rebut evidence which is the basis for the Department's recommendation. If the Bidder fails to avail itself of the opportunity to rebut the Department's evidence, the Bidder may be deemed to have waived all rights of appeal.

- E. If the Bidder presents evidence in rebuttal to the Department, the Department shall evaluate the merits of such evidence, and based on that evaluation, make a recommendation to the Board of Supervisors. The final decision concerning the responsibility of the Bidder shall reside with the Board of Supervisors.
- F. These terms shall also apply to proposed [subcontractors/subconsultants] of Bidders on County contracts.

2. Bidder Debarment

- A. The Bidder is hereby notified that, in accordance with Chapter 2.202 of the County Code, the County may debar the Bidder from bidding on other County contracts for a specified period of time, not to exceed 3 years, and the County may terminate any or all of the Bidder's existing contracts with County, if the Board of Supervisors finds, in its discretion, that the Bidder has done any of the following: (1) violated any term of a contract with the County, (2) committed any act or omission which negatively reflects on the Bidder's quality, fitness or capacity to perform a contract with the County or any other public entity, or engaged in a pattern or practice which negatively reflects on same, (3) committed an act or offense which indicates a lack of business integrity or business honesty, or (4) made or submitted a false claim against the County or any other public entity.
- B. If there is evidence that the [apparent low Bidder/highest ranked Proposer] may be subject to debarment, the Department shall notify the Bidder in writing of the evidence which is the basis for the proposed debarment, and shall advise the Bidder of the scheduled date for a debarment hearing before the Contractor Hearing Board.
- C. The Contractor Hearing Board shall conduct a hearing where evidence on the proposed debarment is presented. The Bidder and/or the Bidder's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a proposed decision, which shall contain a recommendation regarding whether the Bidder should be debarred, and, if so, the appropriate length of time of the debarment. If the Bidder fails to avail itself of the opportunity to submit evidence to the Contractor Hearing Board, the Bidder may be deemed to have waived all rights of appeal.

- D. A record of the hearing, the proposed decision and any other recommendation of the Contractor Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny or adopt the proposed decision and recommendation of the hearing Board.
- E. These terms shall also apply to proposed [subcontractors/subconsultants] of Bidders on County contracts.

## STANDARD CONTRACT LANGUAGE

1. Contractor Responsibility and Debarment (Use "Contractor", "Consultant", "Vendor" etc. as appropriate to the type of contract.)
  - A. A responsible Contractor is a Contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the contract. It is the County's policy to conduct business only with responsible contractors.
  - B. The Contractor is hereby notified that, in accordance with Chapter 2.202 of the County Code, if the County acquires information concerning the performance of the Contractor on this or other contracts which indicates that the Contractor is not responsible, the County may, in addition to other remedies provided in the contract, debar the Contractor from bidding on County contracts for a specified period of time not to exceed 3 years, and terminate any or all existing contracts the Contractor may have with the County.
  - C. The County may debar a contractor if the Board of Supervisors finds, in its discretion, that the Contractor has done any of the following: (1) violated any term of a contract with the County, (2) committed any act or omission which negatively reflects on the Contractor's quality, fitness or capacity to perform a contract with the County or any other public entity, or engaged in a pattern or practice which negatively reflects on same, (3) committed an act or offense which indicates a lack of business integrity or business honesty, or (4) made or submitted a false claim against the County or any other public entity.
  - D. If there is evidence that the Contractor may be subject to debarment, the Department will notify the Contractor in writing of the evidence which is the basis for the proposed debarment and will advise the Contractor of the scheduled date for a debarment hearing before the Contractor Hearing Board.
  - E. The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. The Contractor and/or the Contractor's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a proposed decision, which shall contain a recommendation regarding whether the contractor should be debarred, and, if so, the appropriate length of time of the debarment. If the Contractor fails to avail itself of the opportunity to submit evidence to the Contractor Hearing Board, the Contractor may be deemed to have waived all rights of appeal.

- F. A record of the hearing, the proposed decision and any other recommendation of the Contractor Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny or adopt the proposed decision and recommendation of the Hearing Board.
- G. These terms shall also apply to [subcontractors/subconsultants] of County Contractors.